

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC 20423**

In the Matter of:)

RAIL TRANSPORTATION)
CONTRACTS UNDER 49 U.S.C. 10709)

STB Ex Parte No. 676

**COMMENTS OF
ARKANSAS ELECTRIC COOPERATIVE CORPORATION**

Arkansas Electric Cooperative Corporation ("AECC") respectfully submits these comments in response to the notice served by the Board on March 12, 2008, which instituted this proceeding to address the Board's proposed full disclosure/informed consent requirement in the formation of rail transportation contracts

I. STATEMENT OF INTEREST

AECC is a membership-based generation and transmission cooperative that provides wholesale electric power to electric cooperatives, which in turn serve approximately 460,000 customers located in each of the 75 counties in Arkansas. In order to serve its member distribution cooperatives, AECC has entered into arrangements with other utilities within the state to share generation and transmission facilities. The largest of AECC's generation assets are its ownership interests in the White Bluff plant at Redfield, AR and the Independence plant at Newark, AR, each of which typically burns in excess of 6 million tons of Powder River Basin (PRB) coal annually. AECC holds a 35 percent interest in each of these plants (for which Entergy is the operator and majority owner). In addition, AECC holds a 50 percent interest (with American Electric Power) in

the Flint Creek plant, which is located in Gentry, AR. This plant normally burns in excess of 2 million tons of PRB coal annually.

As a result of the large volume of PRB coal used by these plants and the essential role of rail transportation for these movements, AECC has a direct interest in actions by the Board that affect its rail transportation options.

II. COMMENTS

AECC concurs fully with the Board's March 12 notice in two respects. First, for reasons outlined in the comments submitted by AECC and other parties, the proposal advanced and considered in STB Ex Parte No. 669, Interpretation of the Term "Contract" in 49 U.S.C. § 10709, would not have achieved the objectives identified by the Board. Second, having concluded that the earlier proposal should not be pursued, the Board properly recognized the fundamental nature of the contract definition issue, and the importance of continuing the pursuit of a resolution. Leaving the water muddy was not an option here, and the type of full disclosure/informed consent requirement the Board has proposed appears to hold a reasonable potential to address the issues that originally prompted the Board's concern.

Especially for volume shippers, contracting is a critical component of the reliance on competition envisioned under the Staggers Act. It represents an administrative avenue through which competition may occur, and actions that improve productivity may be identified, negotiated and implemented. The mechanism of contracting is particularly crucial in a duopoly - to avoid creating opportunities for collusive conduct between two competitors, it is important to protect the confidentiality of the commercial arrangements that each is willing to enter.

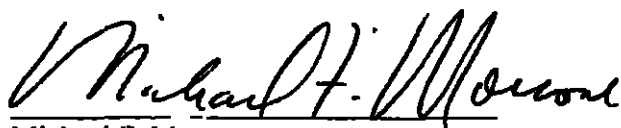
A degree of confidentiality in contracting is contemplated and referenced in 49 U.S.C. § 10709(d). The benefits of such confidentiality are effectively illustrated by the experience of competitive PRB coal shippers during the 20-year period (from 1984-2004), when confidential contracting yielded a consistent overall record of productivity improvements and inflation-adjusted rate reductions. It is only since the railroads have chosen to turn to the tariff-like system of "public pricing", where all of the terms and conditions of a customer's traffic movement via one railroad (including price) are revealed to or are easily discovered by a potential competing railroad, that this pattern has been undermined.

To ensure that the pro-competitive benefits of contracting are achieved, the Board should take care to ensure that confidentiality is protected in the implementation of the contemplated full disclosure/informed consent requirement. Specifically, as part of informed consent, the Board should require that - absent the consent of all involved parties - neither the negotiating positions of individual parties nor the results of the negotiations may be disclosed to outside parties. Maintenance of such confidentiality in contracting will help to ensure the effectiveness of market forces in determining rail price/service characteristics.

AECC appreciates the Board's continuing efforts to review and adapt its practices to the changing circumstances of the rail industry.

Respectfully submitted,

Arkansas Electric Cooperative Corporation



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